

REMARKS

Upon entry of the instant amendment claims 1, 3 and 5-7 will remain pending in the instant application and stand ready for further action on the merits.

The amendments made herein to the claims do not incorporate new matter into the application as originally filed. In this respect, the following is noted.

Claim 1 is amended herein to insert limitations of prior claim 4 (now cancelled) and to clarify that the liquid shut-off region prevents liquid migration within said topsheet “beyond the liquid shut-off region”, which finds support at page 4, lines 4-5 and page 5, lines 10-18 of the originally filed specification, and the originally filed drawings, including Figures 2 and 3.

Claim 5 is amended herein to change its dependency, based on the cancellation of claim 4, and the amendment of claim 1 to recite limitations of prior claim 4 (now cancelled).

Claim 6 is amended herein into an independent format by inserting into claim 6 limitations from instantly amended claim 1.

Claim 7 is amended herein by inserting into claim 7 limitations recited in claim 3 and prior claim 4 (now cancelled).

Based on the above considerations, entry of the instant amendment is respectfully requested as is an early and favorable action on the merits.

***Interview with Examiner Kidwell***

Applicants appreciate Examiner Kidwell's courtesy in granting a personal interview to the Undersigned and Mr. Koichi Niinaka at the USPTO on the morning of August 31, 2005. The Examiner's statement of the substance of the interview, as set forth in the "Examiner Interview Summary Form" is correct.

***Claim Rejections – 35 USC § 102(b)***

Claims 1, 3-7 have been rejected under the provisions of 35 USC § 102(b) as being anticipated by *Kitaoka US '637* (US 5,662,637). Reconsideration and withdraw of this rejection is respectfully requested based on the following considerations.

***Requirements for Anticipation***

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art." *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test,

i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

*The Present Invention and Its Advantages*

The present invention relates to an absorbent article such as a disposable diaper, which has the characteristics of being: (1) excellent in anti-leak properties, (2) good in workability (or processibility), (3) exhibiting a satisfactory anti-leak effect even when a bulky topsheet is employed, (4) good in productivity and (5) low in manufacturing cost.

In particular, the present invention provides an absorbent article including a liquid-permeable topsheet, a liquid-impermeable backsheet and a liquid retentive absorbent core interposed between the topsheet and the backsheet, the absorbent article being substantially vertically elongated and having an upstanding gather, wherein the topsheet has a liquid shut-off region in a linear shape which prevents liquid migration within the topsheet beyond the liquid shut-off region, and the liquid shut-off region is located at an area outside the periphery of the absorbent core and is formed independent of a joined section between the topsheet and a sheet material for forming the upstanding gather, and wherein the topsheet is not thermally bonded to other sheet materials at the liquid shut-off region (e.g., see Claim 1).

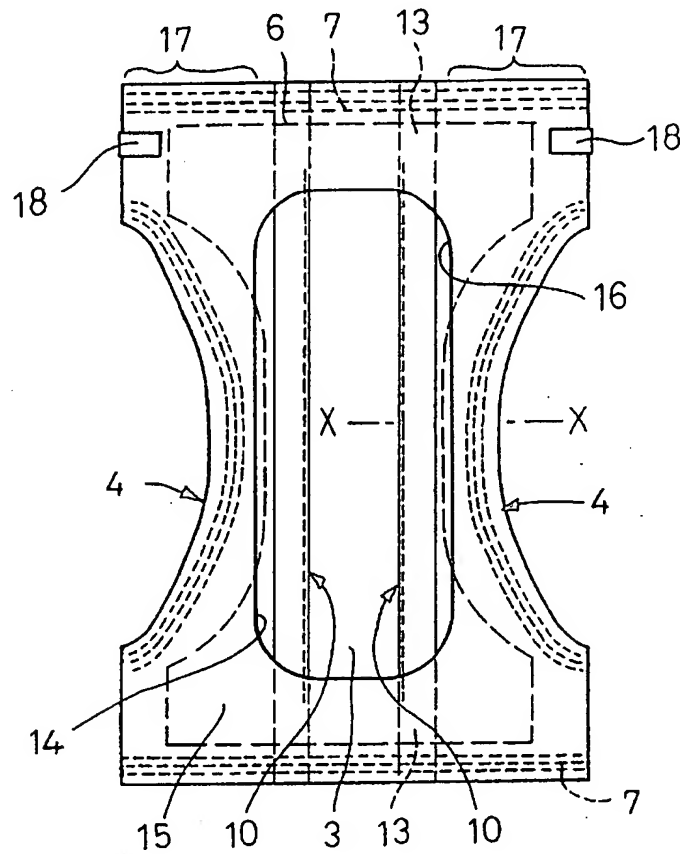
*Distinctions Over Kitaoka US 5,662,637*

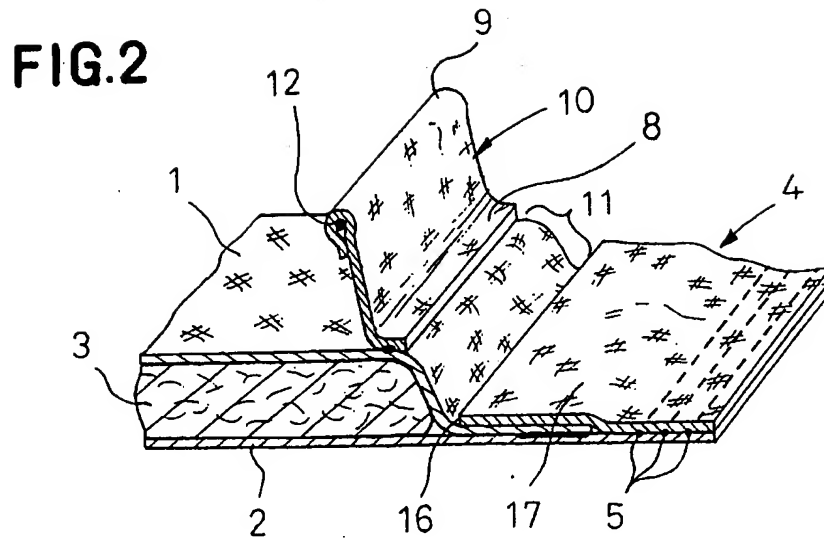
As shown in Figures 1-2 of Kitaoka US '637 (*see below*), Kitaoka's invention contains an exposed zone (11) on the under crotch position of the coversheet (15). The exposed zone (11) causes what is known as "the wet back phenomena" meaning that when a baby sits under its own

weight (e.g., on the floor) liquid stored in the absorbent of diaper exudes. Notably, in each of Figures 1-2 of Kitaoka US '637, there is *not* provided any liquid shut-off area in the coversheet (15) as recited in instant claim 1, and as a result, liquid is not prevented from freely migrating in the coversheet to the edge portions thereof.

Figures 1 and 2 of Kitaoka US 5,662,637

FIG.1



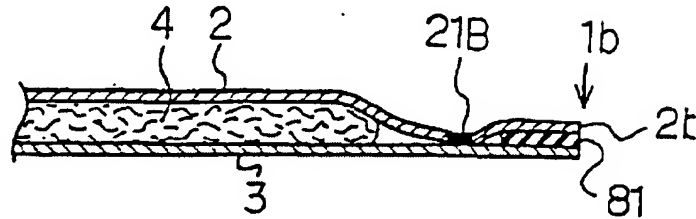


Such a “wet back phenomena” problem is *not* associated with the instantly claimed absorbent articles, because the claimed absorbent articles possess a structure wherein a “*topsheet has a liquid shut-off region in a linear shape over the longitudinal direction, which prevents liquid migration within said topsheet beyond the liquid shut-off region, and said liquid shut-off region is located at an area outside the periphery of said absorbent core and is formed independent of a joined section between said topsheet and a sheet material for forming said upstanding gather, wherein said topsheet is not thermally bonded to other sheet materials at said liquid shut-off region....*” (See claim 1.)

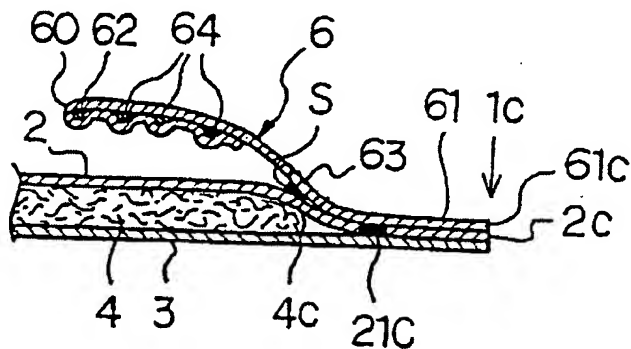
The “liquid shut-off region of the absorbent articles of the present invention is clearly shown in various Figures of the instant application, including **Figure 2** (see **21B** below) and **Figure 3** (see **21 C** below) :

**Figures 2 and 3 of the Instant Invention**

**Fig. 2**



**Fig. 3**



As can be easily seen in each of the above **Figures 2 - 3** in the present application, a liquid shut-off region (**21B** in **Figure 2**, and **21C** in **Figure 3**) is present in the topsheet **2**. The liquid shut-off region prevents liquid migration within said topsheet beyond the liquid shut-off region.

In order to help the Examiner better understand the importance of the liquid shut-off region in the topsheet of the inventive absorbent articles, the following disclosures in the instant application are noted (*See pages 4-7 of the instant specification.*):

*The topsheet 2 of the disposable diaper 1 has a liquid shut-off region 21 in a linear shape which prevents liquid migration within the topsheet 2. ... The liquid shut-off regions 21 are located on the opposite longitudinal end portions and the opposite side portions of the diaper 1. The liquid shut-off regions 21A, 21B located on the longitudinal end portions, respectively, are in a linear shape over the widthwise direction of the diaper 1, whereas the liquid shut-off regions 21C,*

*21C located on the side portions, respectively, are in a linear shape over the longitudinal direction of the diaper 1.... (See page 4, lines 4-18.)*

*Each liquid shut-off region 21 is formed at a region outside the peripheral edge portion of the absorbent core 4. That is to say, the liquid shut-off regions 21A, 21B are formed at regions outside the opposite end edges in the longitudinal direction of the absorbent core 4, whereas the liquid shut-off regions 21C, 21C are formed at regions outside the opposite left and right side edges in the longitudinal direction of the absorbent core 4. Owing to this feature, even if a body liquid should migrate through the interior of the topsheet, the body liquid would not leak from the peripheral edge portion of the diaper because it would collide against any or some of the liquid shut-off regions so that further movement of the body liquid is prohibited. That is to say, the leak of a body liquid from the waist portion is prevented by the liquid shut-off regions 21A, 21B and the leak from the leg areas is likewise prevented by the liquid shut-off regions 21C, 21C. (See page 5, lines 10-21.)*

*As shown in FIGS. 2 and 3, the respective liquid shut-off regions 21 are formed independent of a joined section S between the topsheet 2 and the sheet material 61 for forming the upstanding gather. That is to say, the respective liquid shut-off regions 21 are formed at other regions than a joined section S between the topsheet 2 and the sheet material 61. The liquid shut-off regions 21 are not formed at the time the sheet material 61 for forming the upstanding gather is joined to the topsheet 2. (See page 5, line 26 to page 6, line 1.)*

*It is preferable that the liquid shut-off region 21 in the present invention be formed independent of a joined section between the topsheet 2 and other sheets (sheet material 61, backsheet 3, etc.). (See page 7, lines 7-10.)*

*By forming the liquid shut-off region 21 to be independent of the joined section between the sheet material 61 and the topsheet 2, the working (or processing) conditions required at the time of joining the sheet material 61 for forming an upstanding gather are not limited, the sheet material 61 can be joined to the topsheet 2 by an appropriate method even in the case where a bulky nonwoven fabric is used for the topsheet 2. (See page 7, lines 1-6.)*

Accordingly, because Kitaoka US '637 completely fails to disclose or teach such a liquid shut-off region such as occurs in the structure of the instant inventive absorbent articles, it follows that the same Kitaoka US '637 reference cannot anticipate any of the instantly pending claims, since it does not teach or otherwise provide for each of the limitations recited in the pending claims.

Based on the above considerations, the present invention is not anticipated by the cited Kitaoka US '637 reference, as it fails to meet all of the limitations of any of pending claims 1, 3 and 5-7. As such withdraw of each of the outstanding anticipation rejection is required at present.

*Additional Considerations*

It is also note that the cited Kitaoka US '637 reference is incapable of rendering the present invention obvious under the provisions of 35 USC § 103(a). This assertion is based on the fact that the Kitaoka US '637 reference fails to provide any teaching, suggestion or motivation to those of ordinary skill in the art that would allow them to arrive at the invention as claimed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the cited art or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).



**Conclusion**

Based on the amendments and remarks presented herein it is submitted that the cited art is incapable of anticipating or rendering obvious any of instantly pending claims 1, 3 and 5-7. As such the Examiner is respectfully requested to issue a notice of allowance indicating that each of the pending claims allowed and patentable under the provisions of title 35 of the United States Code.

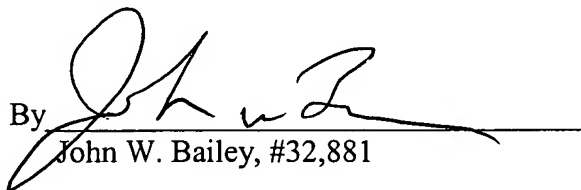
Should there be any questions concerning the present amendment, or any issues remaining after consideration of the instant amendment, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number indicated below, in order to help further prosecution of the present case.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 CFR §§ 1.16 or 1.17; particularly, extension of time fees.

OCT 12 2005

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
John W. Bailey, #32,881

JWB/jwb  
0445-0318P

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000